

**§ 399.41 Zones of limited suspension for international cargo rates.**

(a) *Applicability.* This section states the Board's policy for suspending rate changes for the transportation of property in foreign air transportation. It does not affect the Board's authority to suspend any rate as unjustly discriminatory, unduly preferential, or unduly prejudicial. This section applies to rate changes by all direct air carriers and direct foreign air carriers.

(b) *Standard foreign rate levels.* For each market in foreign air transportation, the standard foreign rate level for the carriage of property shall be the bulk general commodity rates in effect in that market on April 1, 1982, as adjusted in accordance with paragraph (f) of this section. However, the general commodity rate for shipments larger than 500 kg. shall be deemed to be the same as the 500 kg. rate for the purposes of this paragraph, regardless of any different rate in effect in the market.

(c) *Ceilings of limited rate suspension.* Except as provided in paragraph (d) of this section, the Board will not suspend as unreasonable any proposed rate for foreign air transportation of property equal to or less than the following levels:

(1) For all bulk rates (GCR's and SCR's) in the Atlantic region, 20 percent above the standard foreign rate level.

(2) For all bulk rates (GCR's and SCR's) in the Pacific region, 15 percent above the standard foreign rate level.

(3) For all bulk rates (GCR's and SCR's) in the Western Hemisphere region (except Mexico and Canada), 5 percent above the standard foreign rate level.

(4) For all bulk rates (GCR's and SCR's) in Canada/Mexico transborder markets, 10 percent above the standard foreign rate level for the Western Hemisphere.

(5) For all container rates, no maximum level.

(d) *Extraordinary circumstances.* The Board may suspend any tariff if it finds that:

(1) The suspension is in the public interest because of unreasonable regulatory action by a foreign government

with respect to rate proposals of an air carrier, or

(2) All of the following extraordinary circumstances are present:

(i) It is highly probable that the fare would be found unreasonable after investigation;

(ii) There is a substantial likelihood of immediate and irreparable harm to the public if the rate is allowed to go into effect; and

(iii) The suspension is required by the public interest.

(e) *Burden of proof.* Persons requesting tariff suspension under paragraph (d) of this section shall have the burden of producing convincing evidence that the conditions of that paragraph are present.

(f) *Standard foreign rate level adjustments.* (1) The Board will periodically adjust the standard foreign rate levels to reflect the percentage change in average operating costs per available ton-mile since the previous adjustment.

(2) Costs will be averaged for three regions—the Atlantic, the Pacific, and Western Hemisphere—and applied equally among all markets in each region.

(3) Cost computations will be based on scheduled freighter and combination service by U.S. air carriers.

(4) Adjustments will be made on April 1 and October 1 of each year, or more frequently as the Board finds appropriate.

(5) In computing costs under this section, the Board will make no adjustments for load factors, aircraft utilization, or other matters due to operational decisions made solely by carrier management. However, the Board retains the discretion to normalize costs for strikes, mandatory aircraft groundings, and other occurrences not solely due to management decisions.

(g) *Definitions.* For the purpose of this section:

(1) *GCR* means general commodity rate.

(2) *SCR* means specific commodity rate.

(3) *Container rate* means any rate specifically applicable to property tendered to the carrier in a unit load device.

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